

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. MARIO ESTRADA

Appeal from the Circuit Court for Maury County
No. 12131 Robert L. Jones, Judge

No. M2002-02707-CCA-R3-CD - Filed October 19, 2004

The appellant, Mario Estrada, appeals the trial court's denial of his motion to reduce his sentence pursuant to Rule 35 of the Tennessee Rules of Criminal Procedure. The State has filed a motion requesting that this Court dismiss the appeal or affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. After a review of the record, this court determines that the State's motion should be granted. Appellant has failed to present an adequate record for review. Moreover, appellant has failed to show that the trial court abused its discretion in denying the motion to modify appellant's sentence. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed Pursuant to Rule 20, Rules of
the Court of Criminal Appeals**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and, JERRY L. SMITH, JJ., joined.

Robin Farber, for the appellant, Mario Estrada.

Paul G. Summers, Attorney General & Reporter; Jennifer L. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The Appellant was indicted for: one count of aggravated arson; eight counts of attempted first degree murder; and one count of possession of a prohibited weapon. On December 10, 2001, the Appellant pled guilty to: one count of arson, a class C felony; eight counts of aggravated assault, class C felonies; and one count of possession of a prohibited weapon, a Class E felony. Pursuant to a plea agreement, the Appellant received three-year sentences for each Class C felony conviction, and a one year sentence for possession of a prohibited weapon. As provided by the agreement, the

arson conviction and three of the aggravated assault convictions were ordered to run consecutively, with all other sentences being concurrent. This resulted in an effective twelve-year sentence. State v. Estrada, No. M2004-01291-CCA-RM-CD, 2004 WL 1462647 (Tenn. Crim. App., Nashville, June 29, 2004). The appellant appealed to this court on the issue of the trial court's denial of alternative sentencing. Following a remand from the Supreme Court, this court affirmed the trial court's denial of alternative sentencing. Id.

In this appeal, the appellant asserts that the trial court erred in denying a Tenn. R. Crim. P. 35 motion to reduce his sentence. The appellant asserts that his sentence should be modified to split confinement. However, the appellant has failed to include a copy of the Rule 35 motion in the appellate record. As the state correctly argues, it is the appellant's duty to prepare an adequate record for review. Tenn. R. App. P. 24(b). In State v. Ballard, 855 S.W.2d 557, 560-61 (Tenn. 1993), the Supreme Court determined that "[w]here the record is incomplete and does not contain a transcript of the proceedings relevant to an issue presented for review, or portions of the record upon which the party relies, an appellate court is precluded from considering the issue." The record contains the transcript of the hearing on the Rule 35 motion, but does not contain a copy of the Rule 35 motion at issue. It is difficult for this court to adequately review this issue without a copy of the motion at issue.

In any event, the court has reviewed the transcript from the hearing on the Rule 35 motion and the appellant's brief on appeal. A sentence may be modified under Rule 35 of the Tennessee Rules of Criminal Procedure when the trial court finds that the original sentence must be reduced "in the interests of justice." State v. Irick, 861 S.W.2d 375, 376 (Tenn. Crim. App. 1993). Appellate review of Tennessee Rule of Criminal Procedure 35 rulings is governed by an abuse of discretion standard. Id. Based on the record before the court, we cannot determine that the trial court abused its discretion in denying the motion to modify the sentence. In its oral ruling, the court specifically stated that it had not heard anything new at the hearing that would justify a reduction in the appellant's sentence. In fact, the judge stated that the proof at the hearing convinced the court that the sentence was correct. The appellant threw molotov cocktails into a home occupied by eight people, including an eighteen month old child and a pregnant teenager. Estrada, No. M2004-01291-CCA-RM-CD, 2004 WL 1462647 at *1, *2. As the trial court noted, it is fortunate for the appellant that no one inside the home was seriously injured. The appellant has failed to show that the trial court abused its discretion in denying the Rule 35 motion to modify the sentence.

Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE

